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HOUSE OF REPRESENTATIVES
REPORT
105–258

WITNESS PROTECTION AND INTERSTATE RELOCATION ACT OF 1997

SEPTEMBER 18, 1997.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. MCCOLLUM, from the Committee on the Judiciary, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 2181]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2181) to ensure the safety of witnesses and to promote notification of the interstate relocation of witnesses by States and localities engaging in that relocation, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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PURPOSE AND SUMMARY

In a growing number of criminal cases around the United States, police and prosecutors are unable to investigate and prosecute cases successfully because key witnesses refuse to provide critical evidence or to testify because they fear retaliation by the defendant or his or her associates. This problem has become particularly acute in gang-related and drug-related criminal cases. Witnesses refusal to testify is a major concern because it undermines the administration of justice while simultaneously eroding public confidence. Such intimidation is increasingly interstate in nature and now poses a severe impediment nationally to the prosecution of violent street gangs and drug trafficking organizations.

H.R. 2181, the "Witness Protection and Interstate Relocation Act of 1997," addresses the problem of gang-related witness intimidation by establishing a federal offense for traveling in interstate or foreign commerce with the intent to delay or influence the testimony of a witness in a State criminal proceeding by bribery, force, intimidation, or threat. The offense would also include using such means to cause any person to destroy, alter, or conceal a record, document, or other object, with the intent or hindering the document's availability for use in a state criminal proceeding. The bill also establishes enhanced conspiracy penalties for obstruction of justice offenses involving victims, witnesses, and informants.

H.R. 2181 also addresses the need for safe and effective witness protection programs by directing the Attorney General to survey State and local witness protection programs. The Attorney General is then to make training available to witness protection programs based on the results of the survey. The bill also promotes coordination among jurisdictions when a witness is relocated interstate. The Attorney General is to promote coordination among State and local interstate witness relocation programs, in part, by developing a model Memorandum of Understanding for interstate witness relocation. This model Memorandum of Understanding is to include a requirement that notice be provided to the jurisdiction to which the relocation has been made in certain cases. The bill also authorizes the Attorney General to make grants under the Byrne discretionary grant program to support interstate witness relocation programs.

BACKGROUND AND NEED FOR THE LEGISLATION

Prosecutors and police confront two principal types of witness intimidation. The first is overt intimidation, when someone, typically a gang member, does something explicitly to intimidate a witness, often in connection with a single case. The second type is implicit intimidation, when there is a real but unexpressed threat of harm, as when a history of gang violence creates a community-wide atmosphere of fear.

Law enforcement officials around the country report a rise in both forms of witness intimidation, with gang-related witness intimidation now endemic in a growing number of areas as diverse as Los Angeles, California, Des Moines, Iowa, and Washington, D.C. Both case-specific and community-wide fear of retaliation are often fed by the fear that incarcerated gang members will return quickly to the community after serving brief sentences or will be able, while incarcerated, to arrange for other gang members to threaten potential witnesses.

A 1994 survey of 192 prosecutors found that intimidation of victims and witnesses was a major problem for 51 percent of prosecutors in large jurisdictions (counties with populations greater than 250,000) and 43 percent of prosecutors in small jurisdictions (counties with populations between 50,000 and 250,000). Several prosecutors interviewed for the 1996 National Institute of Justice Report, "Preventing Gang- and Drug-Related Witness Intimidation," estimated that witness intimidation occurs in 75 to 100 percent of the violent crimes committed in neighborhoods with active street gangs.

Prosecutors report that the mere fact that a crime is gang-related an be sufficient to prevent an entire neighborhood from cooperating. This type of community-wide intimidation is especially frustrating for prosecutors and police investigators because, while no actionable threat is ever made in a given case—thereby precluding conventional responses—witnesses and victims are still discouraged from testifying. Increasingly, gangs are actively promoting community-wide noncooperation through public humiliation, assaults, and even execution of victims and witnesses (or members of their families). In New York City, a local drug selling gang executed a local man for a petty drug theft, decapitated him, and used his head as a soccer ball, kicking it around the street. In this neighborhood, according to local law enforcement, resident noncooperation prevented law enforcement officials from solving an estimated 30 homicides in 1994 and contributed to an atmosphere of violence in which an average of eight gunshots occurred each night.

Police and prosecutors report an increased incidence of threats of physical violence against victims, witnesses, and their families. Law enforcement officials report that threats are much more common than actual violence but that threats are often just as effective in deterring cooperation because in gang- and drug-dominated communities such threats are credible. In many cities there are as many requests for protection of threatened family members as there are for protection of witnesses themselves.

There is a growing concern within the law enforcement community regarding information gained from witnesses and then provided to defendants by defense attorneys, including confidential court papers. In many jurisdictions, prisoners have unmonitored access to phones and their correspondence is not screened, making it easy for even defendants who are incarcerated to arrange for intimidation based on the improperly obtained information. There is evidence that some gangs have hired attorneys to represent witnesses who may be in custody in relation to the crime in question or on another unrelated charge, without the witness's knowledge or consent, in an effort to control his or her testimony.

Another common form of intimidation, reported in almost every jurisdiction, involves indirect intimidation, such as gang members parked outside a victim's or witness's house, nuisance phone calls, and vague verbal warnings by the defendant or his or her associates. Packing a court room with gang members is a particularly effective and increasingly frequent form of intimidation.

The above-mentioned National Institute of Justice report identifies possible reasons for the recent increase in gang-related witness intimidation and retaliation. The reasons include: a growing lack of respect for authority; the expectation by gang members that their own lives will be brief; a willingness to use violence for almost no reason or in retaliation for even minimal slights; and ironically, the increased penalties being imposed on those convicted of violent crime, which can raise the stakes of a prosecution.

There have been four traditional approaches utilized by State and local law enforcement address the problem of witness intimidation. They are: requesting high bail; prosecuting intimidation vigorously; carefully managing witnesses; and enhancing victim/witness program services (including relocating intimidated witnesses). As gangs have become more interstate in their scope, and their ability and willingness to trace witnesses to other states has expanded, state and local law enforcement officials have called for a greater federal role in responding to gang- related witness intimidation.

Witness protection programs are an indispensable tool in combating violent crime. Successful prosecution of criminal cases depends on the quality of evidence the State can produce. In cases involving drug trafficking and organized criminal activity, prosecutors must often rely on the testimony of witnesses who were involved in some facet of the illegal operation. And in order to encourage them to testify, the government may need to offer protection before, during, and even after the trial when such witnesses may be the subject of retaliatory threats by defendants.

The nature and sophistication of witness protection programs varies widely. Some localities have programs, but have chosen not to fund them. Other localities have no witness relocation capability. And even those that do have such a capability appear to vary considerably: While most programs apparently do not relocate witnesses out of state, others, such as Puerto Rico's program, do so with frequency.

There is currently no federal law directly addressing the interstate relocation of witnesses. As such, unless required by State law or other agreement, programs are under no legal obligation to notify local law enforcement officials of witnesses with criminal records who are relocated interstate.

The potential problems associated with failing to provide notification were highlighted by an incident on June 15th, 1996, in Osceola County, Florida. On this occasion, Florida Highway Patrol officers and plainclothes Puerto Rico police officers moving a witness narrowly averted an altercation. The Florida troopers thought the officers from Puerto Rico were criminals posing as FBI agents, while the officers from Puerto Rico apparently thought the Florida troopers were assassins sent to kill their witness. As a result of this incident, the Florida Department of Law Enforcement and the Puerto Rico Department of Justice entered into a Memorandum of Under-

standing to regulate the relocation of witnesses between the State and the Commonwealth.

HEARINGS

The Judiciary Committee's Subcommittee on Crime held two hearings on the issue of witness protection. The Subcommittee held an oversight hearing on witness protection programs in America on November 7, 1996. The hearing was held in the Council Chambers of the City Hall Building in Orlando, Florida. Witnesses for that hearing included Mr. Miguel E. Gierbolini, Deputy Director of the Special Investigations Bureau of the Department of Justice, Commonwealth of Puerto Rico; Mr. Robert E. Cummings, Assistant Commissioner, Florida Department of Law Enforcement; Mr. Richard Callahan, Prosecuting Attorney, Cole County, Missouri; Mr. Steve T. Kach, Associate Director, Office of Enforcement Operations, Criminal Division, U.S. Department of Justice.

The Subcommittee on Crime also held a hearing on June 16, 1997 on gang-related witness intimidation and retaliation. The purpose of the hearing was to examine the growing problem of gang-related intimidation and retaliation against witnesses, and the need for Federal legislation to address this problem. The witnesses for the hearing included: Ms. Jennifer L. Snyder, Deputy District Attorney, Los Angeles County, California; Mr. Charles F. Gallagher, III, Deputy District Attorney and Chief of the Homicide Unit, Philadelphia District Attorney's Office, Philadelphia, Pennsylvania; and Sergeant Ron Stallworth, Gang Intelligence Coordinator, Utah Division of Investigations, Salt Lake City, Utah.

COMMITTEE CONSIDERATION

On July 16, 1997, the Subcommittee on Crime met in open session and considered a Committee Print of H.R. ————, the "Witness Protection and Interstate Relocation Act of 1997," and by voice vote, a quorum being present, ordered reported to the full Committee a clean bill. This Committee Print was introduced on July 17, 1997 as H.R. 2181, referred the same day to the full Committee, and there held. On July 23, 1997, the Committee met in open session and ordered reported favorably the bill H.R. 2181 without amendment by a recorded vote of 20 to 4, a quorum being present.

VOTE OF THE COMMITTEE

Mr. Nadler offered an amendment to strike the death penalty provisions in the bill. The amendment was defeated by a 7–17 roll call vote.

ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Sensenbrenner			
Mr. McCollum		X	
Mr. Gekas		X	
Mr. Coble		X	
Mr. Smith (TX)		X	
Mr. Schiff			
Mr. Gallegly		X	

ROLLCALL NO. 1—Continued

	Ayes	Nays	Present
Mr. Canady		X	
Mr. Inglis		X	
Mr. Goodlatte			
Mr. Buyer		X	
Mr. Bono		X	
Mr. Bryant (TN)			
Mr. Chabot		X	
Mr. Barr			
Mr. Jenkins		X	
Mr. Hutchinson		X	
Mr. Pease		X	
Mr. Cannon		X	
Mr. Conyers	X		
Mr. Frank	X		
Mr. Schumer			
Mr. Berman			
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren		X	
Ms. Jackson Lee			
Ms. Waters			
Mr. Meehan	X		
Mr. Delahunt	X		
Mr. Wexler			
Mr. Rothman		X	
Mr. Hyde, Chairman		X	
Total	7	17	

Final Passage. Motion to report H.R. 2181 favorably. The motion passed 20–4.

ROLLCALL NO. 2

	Ayes	Nays	Present
Mr. Sensenbrenner			
Mr. McCollum	X		
Mr. Gekas	X		
Mr. Coble	X		
Mr. Smith (TX)	X		
Mr. Schiff			
Mr. Gallegly	X		
Mr. Canady	X		
Mr. Inglis	X		
Mr. Goodlatte			
Mr. Buyer	X		
Mr. Bono	X		
Mr. Bryant (TN)			
Mr. Chabot	X		
Mr. Barr			
Mr. Jenkins	X		
Mr. Hutchinson	X		
Mr. Pease	X		
Mr. Cannon	X		
Mr. Conyers		X	
Mr. Frank	X		
Mr. Schumer			
Mr. Berman			
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott		X	

ROLLCALL NO. 2—Continued

	Ayes	Nays	Present
Mr. Watt		X	
Ms. Lofgren	X		
Ms. Jackson Lee			
Ms. Waters			
Mr. Meehan	X		
Mr. Delahunt		X	
Mr. Wexler			
Mr. Rothman	X		
Mr. Hyde, Chairman	X		
Total	20	4	

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(l)(3)(B) of House Rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 2181, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 25, 1997.

Hon. HENRY J. HYDE,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2181, the Witness Protection and Interstate Relocation Act of 1997.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mark Grabowicz (for

federal costs), who can be reached at 226–2860, and Leo Lex (for the state and local impact), who can be reached at 225–3220.

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

H.R. 2181—Witness Protection and Interstate Relocation Act of 1997

SUMMARY

H.R. 2181 would establish new federal offenses (punishable by fines and imprisonment) relating to attempts to influence the testimony of witnesses in criminal proceedings. The bill would authorize the appropriation of $500,000 for fiscal year 1998 for the Attorney General to provide witness protection training to state and local governments. Additionally, the bill would permit the Attorney General to make grants from existing appropriations to state and local governments for witness security and relocation programs.

Assuming appropriation of the authorized amount, CBO estimates that enacting H.R. 2181 would result in additional discretionary spending of $500,000 over the next two years. This legislation could affect direct spending and receipts; therefore, pay-as-you-go procedures would apply. But CBO estimates that any changes in direct spending and receipts would be less than $500,000 a year, and would have no net effect over time because increases in spending would match increases in receipts with a one-year lag. The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995 (UMRA) and would impose no costs on the budgets of state, local, or tribal governments.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

For the purposes of this estimate, CBO assumes that the amount authorized in H.R. 2181 would be appropriated by the start of fiscal year 1998. Estimated outlays are based on discussions with the Department of Justice about the implementation of the witness protection training program. The estimated budgetary impact of H.R. 2181 is shown in the following table:

SPENDING SUBJECT TO APPROPRIATION
[By Fiscal Year, in Millions of Dollars]

	1998	1999	2000	2001	2002
Authorization Level	0.5	--	--	--	--
Estimated Outlays	0.3	0.2	--	--	--

The costs of this legislation fall within budget function 750 (administration of justice).

PAY-AS-YOU-GO CONSIDERATIONS

The imposition of new criminal fines in H.R. 2181 could increase governmental receipts, but CBO estimates that any such increase would be less than $500,000 annually. Criminal fines would be deposited in the Crime Victims Fund and would be spent in the fol-

lowing year. Thus, direct spending from the fund would match the increase in revenues with a one-year lag.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

The bill contains no intergovernmental mandates as defined in UMRA and would impose no costs on state, local, or tribal governments. The bill would allow the Attorney General to use up to 10 percent of Byrne Grant funding for grants to state and local interstate witness relocation programs. Such an earmark of funds would not affect the total amount of grants received by state and local governments, but it could affect the allocation among recipients.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

The bill would impose no new private-sector mandates as defined in UMRA.

Estimate prepared by: Federal Costs: Mark Grabowicz (226–2860) and Impact on State, Local, and Tribal Governments: Leo Lex (225–3220).

Estimate approved by: Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to Rule XI, clause 2(l)(4) of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article I, section 8 of the Constitution..

SECTION-BY-SECTION ANALYSIS

Sec. 1. Short Title.

This section provides that the Act may be cited as the "Witness Protection and Interstate Relocation Act of 1997."

Sec. 101. Interstate Travel to Engage in Witness Intimidation or Obstruction of Justice. This section modifies Section 1952 of title 18, United States Code, by adding a new subsection (b). This new subsection addresses the problem of gang-related witness intimidation by establishing a federal offense for traveling in interstate or foreign commerce with the intent to delay or influence the testimony of a witness in a State criminal proceeding by bribery, force, intimidation, or threat directed against any person, and then engaging or attempting to engage in such conduct.

The offense would also include traveling interstate with the intent by bribery, force, intimidation, or threat to cause any person to destroy, alter, or conceal a record, document, or other object, with the intent to impair the object's integrity or availability for use in a state criminal proceeding, and then engaging or attempting to engage in such conduct.

This section provides that the sentence for violating the offense in new subsection (b) may be a fine or imprisonment of not more than 10 years, or both. The section provides, however, that if the offense results in serious bodily injury, as defined in section 1365 of title 18, United States Code, the term of imprisonment may be not more than 20 years. Section 1365 defines "serious bodily injury" as "bodily injury which involves—(A) a substantial risk of

death; (B) extreme physical pain; protracted and obvious disfigurement; or (D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty." Section 1365 defines "bodily injury" as "(A) a cut, abrasion, bruise, burn, or disfigurement; (B) physical pain; (C) illness; (D) impairment of the function of a bodily member, organ, or mental faculty; or (E) any other injury to the body, no matter how temporary."

The section further provides, however, that if the offense results in death, the term of imprisonment may be for any term of years or for life, or the sentence may be death.

Sec. 102. Conspiracy Penalty for Obstruction of Justice Offenses Involving Victims, Witnesses, and Informants. This section establishes enhanced conspiracy penalties for obstruction of justice offenses involving victims, witnesses, and informants. It does so by amending Section 1512 of title 18, United States Code, by adding new subsection (j). This new subsection provides that whoever conspires to commit any offense defined in section 1512 or 1513 shall be subject to the same penalties as those penalties established for the offense the commission of which was the object of the conspiracy. Section 1512 establishes the offense of tampering with a witness, victim, or an informant, and section 1513 establishes the offense of retaliating against a witness, victim, or an informant. Consequently, under this section, whoever conspires to tamper with or retaliate against a witness, victim, or informant would be subject to the same penalties as someone who himself or herself directly tampers with or retaliates against a witness, victim, or informant, pursuant to sections 1512 and 1513 of title 18, United States Code.

Sec. 201. Witness Relocation Survey and Training Program. This section addresses the need for safe and effective witness protection programs. It does so by directing the Attorney General to survey all State and selected local witness protection and relocation programs to determine the extent and nature of such programs and the training needs of those programs. The Attorney General is to report the results of this survey within 270 days of the bill becoming law. It is the Committee's view that the local witness protection and relocation programs that are included in the survey should be sufficient in number and varied in type so as to ensure that the survey encompasses a representative sample of such programs. The Committee anticipates that the survey will help to answer certain key questions: How many States, counties and cities have witness relocation programs? What is their degree of sophistication? Are there common deficiencies among these programs? What are their training needs?

This section further directs the Attorney General to use the results of the survey to make training available to State and local law enforcement agencies to assist them in developing and managing witness protection and relocation programs. It is the view of the Committee that such training should be performed substantially by representatives from the Federal agency with greatest expertise in witness protection, the U.S. Marshals Service. Such training, to be adequately developed and implemented, should be supported by additional appropriations dedicated for such purposes. Such additional resources would ensure that the training can be provided without compromising existing programs.

This section authorizes to be appropriated to carry out the survey and training an amount not to exceed $500,000 for fiscal year 1998.

Sec. 202. Federal–State Coordination and Cooperation Regarding Notification of Interstate Witness Relocation. This section seeks to promote coordination among jurisdictions when a witness is relocated interstate.

Subsection (a) of this section directs the Attorney General to engage in activities, including the establishment of a model Memorandum of Understanding (MOU), as delineated in subsection (b), which promote coordination among State and local witness interstate relocation programs. It is the Committee's view that such activities would not necessarily require developing new programs; rather, such activities might be managed and conducted within the framework of already existing programs.

Subsection (b) directs the Attorney General to establish a model MOU for States and localities that engage in interstate witness relocation. This model MOU is to include a requirement that notice be provided to the jurisdiction to which the relocation has been made when the relocation is interstate and the relocated witness has been arrested for or convicted of a crime of violence as described in section 16 of title 18, United States Code. A "crime of violence" is defined in section 16 as "(a) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or (b) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense." The Committee recognizes that witness security and relocation programs by their very nature require maximum secrecy to ensure witness safety. Consequently, this notification requirement should be fashioned with due regard for preserving secrecy and limiting dissemination of any witness information on a need-to-know basis.

Subsection (c) of this section authorizes the Attorney General to make grants under the Byrne discretionary grant program, pursuant to section 511 of subpart 2 of part E of the Omnibus Crime Control and Safe Streets Act of 1968, to those jurisdictions that have interstate witness relocation programs that have substantially followed the MOU. The Attorney General is authorized to expend up to 10 percent of the total amount appropriated for the Byrne discretionary grant program for this purpose.

Subsection (d) directs the Attorney General to establish guidelines relating to the implementation of subsection (c) and to determine, consistent with such guidelines, which jurisdictions are eligible for grants under subsection (c).

Sec. 203. Byrne Grants. This section ensures that funding pursuant to the Byrne grant program can be used by recipients to develop and maintain witness security and relocation programs, including training of personnel in the effective management of such programs. This section does so by explicitly adding such a use of funds to the list of allowable uses.

Sec. 204. Definition. This section defines the term State to include the District of Columbia, Puerto Rico, and any other commonwealth, territory, or possession of the United States.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

TITLE 18, UNITED STATES CODE

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PART I—CRIMES

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CHAPTER 73—OBSTRUCTION OF JUSTICE

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§ 1512. Tampering with a witness, victim, or an informant

(a) * * *

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(j) Whoever conspires to commit any offense defined in this section or section 1513 of this title shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.

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CHAPTER 95—RACKETEERING

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§ 1952. Interstate and foreign travel or transportation in aid of racketeering enterprises

(a) * * *

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(b) Whoever travels in interstate or foreign commerce with intent by bribery, force, intimidation, or threat, directed against any person, to delay or influence the testimony of or prevent from testifying a witness in a State criminal proceeding or by any such means to cause any person to destroy, alter, or conceal a record, document, or other object, with intent to impair the object's integrity or availability for use in such a proceeding, and thereafter engages or endeavors to engage in such conduct, shall be fined under this title or imprisoned not more than 10 years, or both; and if serious bodily injury (as defined in section 1365 of this title) results, shall be so fined or imprisoned for not more than 20 years, or both; and if death results, shall be so fined and imprisoned for any term of years or for life, or both, and may be sentenced to death.

[(b)**]** *(c)* As used in this section (i) "unlawful activity" means (1) any business enterprise involving gambling, liquor on which the Federal excise tax has not been paid, narcotics or controlled substances (as defined in section 102(6) of the Controlled Substances

Act), or prostitution offenses in violation of the laws of the State in which they are committed or of the United States, (2) extortion, bribery, or arson in violation of the laws of the State in which committed or of the United States, or (3) any act which is indictable under subchapter II of chapter 53 of title 31, United States Code, or under section 1956 or 1957 of this title and (ii) the term "State" includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

[(c)] *(d)* Investigations of violations under this section involving liquor shall be conducted under the supervision of the Secretary of the Treasury.

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SECTION 501 OF THE OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968

DESCRIPTION OF THE DRUG CONTROL AND SYSTEM IMPROVEMENT GRANT PROGRAM

SEC. 501. (a) * * *

(b) The Director of the Bureau of Justice Assistance (hereafter in this part referred to as the "Director") is authorized to make grants to States, for the use by States and units of local government in the States, for the purpose of enforcing State and local laws that establish offenses similar to offenses established in the Controlled Substances Act (21 U.S.C. 801 et seq.) and to improve the functioning of the criminal justice system with emphasis on violent crime and serious offenders. Such grants shall provide additional personnel, equipment, training, technical assistance, and information systems for the more widespread apprehension, prosecution, adjudication, and detention and rehabilitation of persons who violate these laws, and to assist the victims of such crimes (other than compensation), including—

(1) * * *

* * * * * * *

(25) developing or improving in a forensic laboratory a capability to analyze deoxyribonucleic acid (hereinafter in this title referred to as "DNA") for identification purposes; [and]

(26) to develop and implement antiterrorism training programs and to procure equipment for use by local law enforcement authorities[.]*; and*

(27) developing and maintaining witness security and relocation programs, including providing training of personnel in the effective management of such programs.

* * * * * * *

DISSENTING VIEWS

We support the witness notification and relocation provisions in this legislation as well as the goals of the witness intimidation provisions. Nothing is more pernicious to our system of laws than interfering with witnesses. Commonly drug king pins and gang members attempt to pervert our system of criminal laws by threatening juries and witnesses with death and injury if they do not cooperate in their subversion. As a result, we support the notion that those that obstruct our system of justice will be subject to higher penalties. And all of us can support measures designed to make such conduct a federal crime, if state lines are crossed.

Although we support the goals of the bill, we are forced to dissent from passage of this legislation for the sole reason that the legislation includes the death penalty for witness intimidation that results in death.[1] The Committee voted 17–7 against an amendment offered by Congressman Nadler deleting the death penalty.

Recently, the Death Penalty Information Center issued a report entitled "Innocence and the Death Penalty: The Increasing Danger of Mistaken Executions." This report describes 69 instances since 1973 in which condemned prisoners had to be released from death row because mistakes had led to wrongful convictions.[2] This figure represents more than one percent of the approximately 6,000 people sentenced to death in that period. Of course, there are no statistics available on the number of innocent people actually executed.[3]

Moreover, this past February, the American Bar Association passed a resolution declaring that the system for administering the death penalty in the United States is unfair and lacks adequate safeguards.[4] The resolution declared that executions should be stopped until a greater degree of fairness and due process can be achieved.[5] Twenty-five years after the United States Supreme Court invalidated the death penalty in *Furman* v. *Georgia*,[6] finding that the death penalty was "so wantonly and so freakishly imposed" that those being sentenced to die received cruel and unusual punishment,[7] little has changed. The death penalty is still inflicted upon a "capriciously selected random handful."[8] Moreover, the proliferation of new death penalty offenses only works to guarantee that its imposition will become even more haphazard and capricious.

There is compelling evidence from many jurisdictions that the race of the defendant is the primary factor governing the imposition of the death sentence.[9] For example, in the Ocmulgee Judicial Circuit in Georgia, the district attorney sought the death penalty in 29 cases between 1974 and 1994; in 23 of those 29 cases (79%)

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[1] Also troubling is this legislation's inclusion of the death penalty for conspiracy offenses. This allows a defendant to be sentenced to death without tangible evidence of guilt of murder, thereby increasing the risk of a mistaken conviction and execution.

[2] Bob Herbert, *In America, No Room for Doubt,* N.Y. Times, July 21. 1997 at A17.

[3] *Id.*

[4] *Id.*

[5] *Id.*

[6] 408 U.S. 238 (1972).

[7] *Id.* at 310.

[8] *Id.* at 309–310.

[9] Edwards, Don and John Conyers, Jr., *Violent Crime Control and Law Enforcement Act of 1994: The Racial Justice Act—A Simple Matter of Justice*, 20 Dayton L. Rev. 699, 702 (1995).

the defendant was black, although blacks make up only 44% of the Circuit's population.[10] Similar evidence is emerging under the federal death penalty for "drug kingpins." Of 37 defendants against whom the death penalty was sought between 1988 and 1994, four defendants were white, four were hispanic and twenty-nine were black. [11]

Death sentences are even more frequently imposed when the victim is white.[12] Since 1977, more than 80% of the country's death penalty cases have involved white victims while about half of the homicides committed each year in the United States involve black victims.[13] A study by Professor David Baldus of the University of Iowa of over 2,500 homicide cases in Georgia, which controlled for 230 non-racial factors, found that a person accused of murdering a white was 4.3 times more likely to be sentenced to death than a person accused of murdering a black.[14] Although fewer than forty percent of Georgia homicide cases involved white victims, eighty-seven percent of all cases in which a death sentence was imposed involved white victims.[15]

We are also concerned that the imposition of the death penalty has become so routine that there is now immediate support for the addition of this drastic penalty whenever it is suggested. A death penalty attached to a new crime is deemed unremarkable and no longer even engenders serious debate or discussion.

Given the overwhelming concerns about the fairness and the accuracy with which the death penalty is imposed, combined with the lack of a proven deterrent effect, we are compelled to dissent from legislation that includes a new death penalty, no matter how laudable the goals of the legislation.

JOHN CONYERS, Jr.
ROBERT C. SCOTT.
MAXINE WATERS.
WILLIAM D. DELAHUNT.
MELVIN L. WATT.

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[10] *Id.*
[11] *Id.*
[12] Bill Rankin, *Fairness of the Death Penalty is Still on Trial; Some Say It's a Matter of Race, Money, Luck,* The Atlanta Journal and Constitution, June 29, 1997, 13A.
[13] *Id.*
[14] Edwards, *The Racial Justice Act,* 20 Dayton L. Rev. at 702 (*citing* David Baldus et al., *Equal Justice and the Death Penalty: A Legal and Empirical Analysis* (1990)).
[15] *Id.*

COMMITTEE ON THE JUDICIARY
(Democratic Members)

John Conyers, Jr.

[redacted]

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Robert C. Scott

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